

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD CLARK ROBBINS,

Defendant-Appellant.

UNPUBLISHED

November 21, 2006

No. 263943

Oakland Circuit Court

LC No. 05-201578-FH

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with a dangerous weapon, MCL 750.82, and was sentenced to two years' probation with the first 60 days to be served in jail. Defendant appeals as of right. We affirm.

Defendant raises two issues on appeal. First, defendant argues that the trial court's admission of prior bad acts evidence deprived him of a fair trial. Second, defendant argues that there was insufficient evidence to support his conviction. We disagree with both assertions.

Generally, a trial court's decision to admit evidence will be reversed only for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). An abuse of discretion exists only when an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made. *People v Rice (On Remand)*, 235 Mich App 429, 439; 597 NW2d 843 (1999). When a trial court's decision regarding the admission of evidence involves a preliminary question of law, review is de novo. *Id.*

This case arises from a physical altercation between defendant and the fiancé of his ex-wife that occurred in the parking lot of defendant's ex-wife's apartment. Defendant and his ex-wife, Beth Robbins, were married for 23 years and went through a bitter divorce in September 2003. Beth has since moved in with her fiancé, Charles Bates, the victim of the altercation with defendant. Beth's and Bates' relationships with defendant have been rife with conflict. Defendant had in place a personal protection order against Beth and Bates due to alleged harassment suffered by him. Beth and Bates, on the other hand, have had their cars vandalized on multiple occasions and testified to believing that defendant was the one responsible. On these occasions, Beth's and Bates' cars would be the only ones in their apartment complex vandalized. Bates, who has filed multiple police reports against defendant for alleged vandalism and for

threatening Bates' life, also testified to having witnessed defendant vandalize his car on one occasion. Further, Beth testified to experiencing a pattern wherein after one of defendant's phone calls, Beth's or Bates' car would end up vandalized. Prior to the incident in question, Beth had very little contact with defendant and testified to being afraid of defendant.

On the night of the altercation at issue, Beth and Bates were having dinner at a restaurant when defendant began calling Beth's cell phone multiple times. Defendant indicated that he wanted to know why Beth was turning their son against him. Beth told defendant that he knew how he could change that and not to call her again, then hung up. In total, defendant called Beth four times in less than an hour. When Bates and Beth arrived at their apartment complex, Bates called the police. He testified to doing so because he was concerned given the pattern wherein his or Beth's car would be vandalized after one of defendant's phone calls.

Shortly thereafter, Beth saw what she believed to be defendant's car pull into the parking lot of her apartment complex. Bates testified that he went downstairs to investigate and defendant began to hit him with a metal pipe. After being hit, Bates fought for and was able to grab the pipe from defendant. In order to get defendant to stop wrestling with him, Bates hit him on the leg. Defendant then got up and walked to his car. In contrast, defendant testified that Beth invited him to the apartment and that it was Bates who brought out the pipe and hit him. Beth testified and confirmed Bates's version of events. Two neighbors of Beth and Bates, Christine Neitzke and Alfred Matthews, testified and also confirmed Bates's version, although they missed the beginning of the altercation and could only testify to the latter portion of it. Defendant's son, Brian, testified that defendant admitted to him that it was he who brought the pipe to the apartment complex and that he had in fact hit Bates with the pipe.

At trial, the issue of vandalism arose several times. Both Christine and Alfred testified to being aware of the vandalism of Beth's and Bates' cars. Alfred testified that he once saw all four tires on each of Beth's and Bates' cars slashed while no other cars in the parking lot were harmed. Christine testified that she had seen damage to Beth's and Bates' cars "several times," and that theirs were the only cars in the parking lot that were vandalized. Christine also testified that she had heard "some things" with regard to the stormy relationship Beth and Bates had with defendant. When Beth took the stand and testified that she believed it was defendant committing the vandalism to her and Bates's cars, defense counsel objected on the grounds of speculation. The judge overruled the objection, indicating that it was admissible as Beth's perception. On appeal, defendant argues that the accusations of vandalism were unproven, irrelevant and unfairly prejudicial. He asserts their admission deprived him of a fair trial.

To the contrary, there was a proper purpose for admitting the evidence of vandalism. The evidence was necessary to fully explain the complete story to the jury. The "res gestae" principle allows for prior bad acts evidence to be admitted if the evidence is necessary to convey to the jury the entire picture of the criminal act. *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). When the prior bad act is connected to or incidentally involves or explains the circumstances of the charged offense, it is properly admitted. *Id.* at 83. Beth testified that she had experienced a pattern wherein after defendant makes a phone call to her, her car or Bates's car would end up vandalized later that evening. It was precisely for this reason that Bates called the police after Beth received four phone calls from defendant while at dinner. It was also for this reason that Bates went downstairs that evening to see whether it was really defendant who had pulled into their parking lot. Therefore, the bad acts evidence was necessary to complete the

story of the charged offense, especially given the fact that defense counsel was the one to first elicit testimony from Beth regarding her conduct toward defendant on previous occasions. Admitting bad acts evidence is proper so long as it does not establish defendant's character in order to show conformity therewith. See *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), mod 445 Mich 1205 (1994). In this case, the evidence was not admitted for the purpose of showing defendant's bad character. Furthermore, defendant could not show that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice. Accordingly, the evidence was properly admitted.

Defendant's second argument on appeal is that there was insufficient evidence to support his conviction. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. See *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of assault with a dangerous weapon are "(1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). In the instant case, multiple witnesses testified to having seen the altercation between defendant and Bates. First, Bates testified that when he went downstairs to the parking lot to investigate whether it was defendant who had pulled in, defendant approached him with a pipe. Bates then indicated that defendant began swinging the pipe, hitting Bates in the forehead, arm, and side. Second, Beth's testimony corroborated Bates' version of events. Third, defendant's son testified that defendant admitted to him that he had gone over to Beth and Bates' apartment after he had been drinking and pulled out a pipe from his trunk. Moreover, an investigating officer testified that Bates' injuries were consistent with his version of the events.

While defendant challenges the credibility of this evidence, the finder of fact is in a superior position to judge the witnesses' credibility. For this reason, appellate courts defer to the fact-finder's resolution of factual issues, especially when it involves witness credibility. See *People v Parker*, 230 Mich App 337, 341; 584 NW2d 336 (1998). Given the facts of this case, it would not be unreasonable for a rational jury to believe the testimony indicating that defendant assaulted Bates with the pipe.

Affirmed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski